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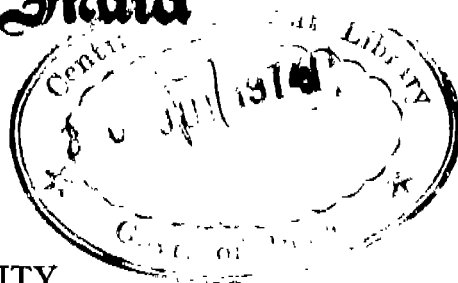
असाधारण
EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 6th July, 1974/Asadha 15, 1896 (Saka)

THE COMPANIES (TEMPORARY RESTRICTIONS ON DIVIDENDS) ORDINANCE, 1974

No. 7 OF 1974

Promulgated by the President in the Twenty-fifth Year of the Republic of India.

An Ordinance to provide, in the interests of national economic development, for temporary restrictions on the power of certain companies to declare dividends out of profits and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Companies (Temporary Restrictions on Dividends) Ordinance, 1974.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Short title,
extent and
commence-
ment.

Defini-
tions.

2. In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the day on which this Ordinance comes into force;

(b) “company” has the meaning assigned to it in the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of the Companies Act, 1956, which has made arrangements prescribed under the Income-tax Act, 1961, for the declaration and payment of dividends within India; 1 of 1956.
43 of 1961.

(c) “distributable profits”, in relation to a financial year of a company to which this Ordinance applies, means,—

(i) one-third of the net profits of the company for that financial year, or

(ii) an amount required to pay twelve per cent. dividend on the face value of the equity shares of the company and dividend payable on its preference shares,

whichever is lower;

(d) “financial year” has the meaning assigned to it in section 2 of the Companies Act, 1956; 1 of 1956.

(e) “net profits” means net profits of the company, as computed in accordance with the provisions of sections 349 and 350 of the Companies Act, 1956. 1 of 1956.

Com-
panies to
which the
Ordinance
applies.

3. This Ordinance shall apply to the following categories of companies, namely:—

(a) a company in which the public are substantially interested, as defined in clause (18) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(b) a company, at least seventy-five per cent. of the share capital of which is, throughout the financial year for which any dividend is declared or paid, beneficially held by an institution or fund established in India for a charitable purpose, the income from dividend whereof is exempt from income-tax under section 11 of the Income-tax Act, 1961; 43 of 1961.

(c) an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power;

(d) an Indian company, the value of whose capital assets, being machinery or plant (other than office appliances or road transport vehicles), as shown in its books on the last day of the financial year for which any dividend is declared or paid, is fifty lakhs of rupees or more;

(e) a company which has been exempted under sub-section (3) of section 104 of the Income-tax Act, 1961, from the operation of that section. 43 of 1961.

Explanation.—For the purpose of clause (c), the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or

in the generation or distribution of electricity or any other form of power, if the income attributable to any of the aforesaid activities included in its gross total income for the relevant financial year is not less than fifty-one per cent. of such total income.

4. (1) For a period of two years from the appointed day, no company to which this Ordinance applies shall declare or pay dividends for any financial year exceeding, in the aggregate, its distributable profits for that financial year irrespective of whether such declaration or payment is made out of the net profits of the company for that financial year or from the accumulated profits for any previous financial year or years.

Restriction on declaration of dividends by companies to which the Ordinance applies.

(2) In computing the aggregate amount which may be declared or paid as dividends in accordance with the provisions of this Ordinance for any financial year, any amount paid or promised or partly paid and partly promised before the appointed day by way of interim dividends for that financial year shall be taken into account; but where the amount of such interim dividend paid before the appointed day exceeds its distributable profits for the financial year for which the interim dividend was paid, no further dividend shall be declared or paid by the company for that financial year.

5. Any dividend declared or paid after the appointed day by a company to which this Ordinance applies in excess of its distributable profits shall, to the extent of such excess, be void, and any amount paid by the company to any shareholder in excess of its distributable profits shall be recovered by the company and no such recovery shall be waived by the company.

Dividend in excess of distributable profits to be void.

6. For a period of two years from the appointed day, no company to which this Ordinance applies shall, except with the previous approval of the Central Government and subject to such conditions and limitations as may be specified by that Government, pay or distribute any interim dividends for any financial year, whether ending before or after the appointed day.

Restrictions on interim dividends.

7. For a period of two years from the appointed day, no company to which this Ordinance applies shall, except with the previous approval of the Central Government,—

Restriction on other distribution.

(a) make any distribution out of its assets;

(b) assume, whether conditionally or otherwise, any obligation to make distribution out of its assets;

(c) grant any loan to any shareholder of the company.

1 of 1956.

8. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956, or in any other enactment (other than this Ordinance) or in any contract or instrument having effect by virtue of any enactment other than this Ordinance.

Ordinance to have overriding effect.

9. Whoever contravenes any provision of this Ordinance, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twice the amount in relation to which such contravention has been made, or with both.

Penalties.

Offences
by com-
panies.

10. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Power to
remove
difficul-
ties.

11. If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty.

V. V. GIRI,
President.

S. K. MATRA,
Joint Secy. to the Govt. of India.